IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

NATIONAL INSURANCE COMPANY LIMITED. **Vs.** **Jagdish Ram & Others**

S.B. CIVIL MISC.APPEAL NO. 525 OF 1995
against the judgment and Award Dated 31.7.1995 passed by the learned Judge,Motor Accident Claims Tribunal, Phalodi in MACT Case No.133 of 1994(189/90).

DATE OF JUDGMENT :: 26th MAY, 2006.

PRESENT

HON'BLE MR. JUSTICE MANAK MOHTA

Mr. B.S.Bhati, for the appellant.
None present for respondent No.1.
Mr. K.L.Soni, for respondent No.2
Mr. Ranjeet Joshi, for respondent No.3.

BY THE COURT :

This appeal is directed against the judgment and Award dated 31.7.1995 passed by the Judge, Motor Accident Claims Tribunal, Phalodi in MACT Case No.133 of 1994 (189/900), whereby, the learned Tribunal has allowed the claim petition and has awarded a sum of Rs.45,000/- plus

interest at the rate of 12% per annum from the date of filing of the claim petition in favour of the claimant and against the non-claimants No.1,2 and 3.

Brief facts giving rise to the present appeal are that on 13.3.90, at about 8.45 A.M., the claimant Jagdish Ram along with Oma Ram was going on a donkey to Baran Khurd Hospital on the road of Osian. When they reached near the floor mill of Chatur Singh, a “Nishan” Truck bearing No.RNQ 5729, which was being driven rashly and negligently by Narsingh Avtar, hit the donkey whereby the donkey fell down and died on the spot. The claimant further stated that Oma Ram who was sitting behind him on the donkey fell down on the road, on account of which, he sustained injuries and the claimant also got fractured in his left leg. Besides the facture, he received simple as well as grievous injuries on his person. It was also alleged in the claim petition that on the day of accident, the claimant was 10 years old, therefore, a claim petition was filed by his father. The claimant's father is businessman. The claimant and his parents remained at Jodhpur in a rented house for months together for the purpose of treatment of the claimant and, thus, his father suffered a lot

in the business. The claimant was admitted in the hospital as per report, both bones Tibia Fibula of one leg were found fractured vide Ex. P/6. It was also alleged in the claim petition that due to fracture, the plaster was remained for about six months on his leg and the claimant is unable to tolerate weight on the legs and he became unable to that extent, his one leg became shortened. His parents has suffered mental agony etc., therefore, claimed Rs.3,68,000/- as compensation under different heads.

On behalf of non-claimants No.1 and 2 , a joint reply to the claim petition has been filed, wherein, it was stated that the accident did not occur from their truck. The said truck is insured with the National Insurance Company. They prayed that the claim filed by the claimant may be dismissed.

A reply to the claim petition was filed on behalf of the non-claimant No.3. The Insurance Company denied the averments made in the claim petition and also stated that at the time of accident, the driver of the alleged truck was not having valid and effective licence, therefore, the owner of the vehicle violated the terms and conditions of the Policy. It was submitted

that the Insurance Company is not liable to pay compensation. Rest of the averments made in the claim petition were denied for want of knowledge. It was prayed that the claim petition may be rejected.

On the basis of pleadings of the parties, the following issues were framed:-

"1- क्या अप्रार्थी सं. 1 ने दि. 13.3.90 को बारां खुर्द गाँव में अपनी निशान ट्रक नं. आर.एन.क्यू. 5729 तेज गति व लापरवाही से चलाकर प्रार्थी के गधे के टक्कर मारी जिससे ओमाराम दूर जाकर गिरा व प्रार्थी का गधा मौके पर ही मर गया तथा निशान ट्रक प्रार्थी के बाये पैर की नली के उपर होकर निकला जिससे उसके पांव टूट गया और शरीर के अन्य भागों पर भी चोटें आयी।

2- क्या प्रार्थी अप्रार्थीगण से क्षतिपूर्ति के रूप में 3,68,000/- रूपये प्राप्त करने का हकदार हैं।

3- क्या दुर्घटना स्वयं प्रार्थी की गलती के कारण घटित हुई हैं इसलिए अप्रार्थी सं. 3 की क्षतिपूर्ति अदा करने की कोई जिम्मेदारी नहीं हैं।

4- क्या वाहन स्वामी द्वारा कथित दुर्घटना की सूचना अप्रार्थी सं. 3 नेशनल इंश्योरेन्स कं. को नहीं दी गई ओर इस प्रकार वाहन स्वामी ने पॉलिसी

की शर्तो का उल्लंघन किया हैं इसलिए अप्रार्थी सं. 3 का क्षतिपूर्ति अदा करने का कोई उत्तरदायित्व नहीं हैं ?

5- क्या दुर्घटना के समय वाहन सं. आर.एन. क्यू. 5729 वैध लाईसेंसधारी व्यक्ति द्वारा नहीं चलाया जा रहा था इसलिए क्षतिपूर्ति अदा करने की अप्रार्थी सं. 3 का कोई उत्तरदायित्व नहीं हैं।

6- क्या दुर्घटना के समय वाहन सं. आर.एन.क्यू. वाहन स्वामी के निर्देशन, नियंत्रण व नियोजन व हितार्थ तथा वैध परमिट व फिटनेस के तहत नहीं चलाया जा रहा था इस कारण भी अप्रार्थी सं. 3 क्षतिपूर्ति अदा करने का कोई उत्तरदायित्व नहीं हैं?

7- अनुतोष ?"

From the side of claimants, the statements of Chatur Singh (AW 1), Koja Ram(AW 2) and Jagdish(AW 3)) were recorded and certain documents Ex.P/1 to Ex.P/6 were produced. In defence, the statements of Narsingh Avtar (NAW 1) and Mahendra Kumar Surana (NAW 2) were recorded and on behalf of the Insurance Company, a true copy of the Policy of the Truck Ex.A/1 was got exhibited.

At the conclusion of trial, the learned Tribunal held

that the accident occurred due to rash and negligent driving of the Truck No.RNQ 5729 and as a result of accident, the claimant received simple as well as grievous injuries on his person and his donkey died on the spot. The learned Tribunal awarded compensation of Rs.45,000/-plus interest as stated above vide judgment and award dated 31.7.1995 in favour of the claimant holding all the non-claimants jointly and severally responsible for the payment.

Being aggrieved by the impugned judgment and award, the non-claimant-National Insurance Company has come up in appeal for setting aside the judgment and award passed against it by the learned Tribunal.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

During the course of argument, the learned counsel appearing on behalf of the appellant submitted that the learned Tribunal has not properly appreciated the facts of the case and wrongly held the appellant also jointly responsible for the payment of compensation. It was contended that the driver of

thealleged truck NAW 1 Nar Singh has admitted in his statement that he was not having driving licence at the time of accident and further admitted that fine was imposed on him in this respect. Thus, it was clear violation of the terms and conditions of the Policy. NAW 2 Mahendra Kumar has been produced on behalf of the appellant. A true copy of the Insurance Policy has been exhibited as Ex.A/1. No objection of production for original Insurance Policy was raised at that time. Thereafter the finding of the learned Tribunal that original copy of the Insurance Policy has not been produced and proved, therefore, terms of the policy has not been proved and therefore, the Insurance Company was held responsible by the learned Tribunal, is not sustainable. It was urged that the appellant may be discharged from this liability. The award may be set aside to that extent and the appeal may be allowed.

On the contrary, the learned counsel for the owner of the vehicle submitted that admittedly, the truck was insured with the appellant and in case of any accident, the Insurance Company is responsible for the payment of compensation. The appellant has failed to prove any violation of the terms and conditions of the Insurance Policy. The defence taken by the

appellant was not available to it. It was contended that by mere producing copy of the Policy, the terms of the policy is not legally proved. Thus, it was prayed that the appeal may be disallowed.

I have considered the rival contentions placed by the learned counsel for the parties and perused the finding and conclusion drawn thereon by the learned Tribunal.

So far as the accident is concerned, the learned Tribunal on the basis of the statement of the witness of occurrence AW 1 Chatur Singh and the statement of the injured-claimant AW 3 Jagdish has rightly concluded that the accident took place due to rash and negligent driving of the offending truck No.RNQ 5729. AW 1 Chatur Singh has stated that he was sitting out-side his floor-mill and he saw this offending truck was being driven rashly and negligently and hit claimant Jagdish and caused injuries to him. Thus, the finding on this issue is to be maintained.

The learned Tribunal on the basis of the material produced by the claimant's side has determined the amount of

compensation that is not exorbitant. Looking to the age of the claimant Jagdish, his leg has been fractured and he remained under treatment for months together. The main contention of the appellant that the driver of the offending truck has admitted that he was not having driving licence but this itself is not sufficient to prove the violation of the terms and conditions of the Insurance Policy. The appellant has neither produced original policy nor sought any permission to produce secondary evidence. Thus, mere exhibition on the true copy of the policy will not serve the purpose. The burden of proving the breach of terms and conditions of the policy was on the Insurance Company that has not been properly discharged. The learned Tribunal has dealt with this issue. The finding on this issue is not suffering from any illegality and infirmity. The learned Tribunal has rightly held the Insurance Company jointly and severally responsible with owner of the vehicle for the payment of compensation.

As per the aforesaid discussion, the contentions of the appellant are not tenable and the appeal is liable to be dismissed and is hereby dismissed. No order as to costs.

(MANAK MOHTA),J.